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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re A.P. et al., Persons Coming Under the
Juvenile Court Law.

B208513
(Los Angeles County
Super. Ct. No. CK63775)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

J.C.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Stephen Marpet, Juvenile Court Referee. Reversed with directions.

Roni Keller, under appointment by the Court of Appeal, for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, and Kim Nemoy, Senior Deputy County Counsel, for Plaintiff and Respondent.

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J.C. (Mother) appeals from a June 11, 2008 order terminating parental rights to her sons, A.P. (born in Nov. 2002) and J.A.C. (born in Oct. 2003), referred to herein as the Children. We agree with Mother that there is insufficient evidence of compliance with the notice provisions of the Indian Child Welfare Act (25 U.S.C. §§ 1901–1952, hereinafter ICWA) and reverse the order on that basis.

BACKGROUND

In June 2006, the Children were taken into protective custody by the Los Angeles County Department of Children and Family Services (DCFS) after Mother left the Children with the maternal great aunt without making any arrangements for their support. DCFS detained the Children with the maternal great aunt, where they remain; the maternal great aunt is their prospective adoptive parent.¹

At a juvenile court hearing on June 20, 2006, the maternal great aunt stated that she did not know whether her family had any American Indian heritage, but at a hearing in August 2006, she told the court that the maternal great-great-grandmother may have Cherokee heritage. Mother filled out a form stating that she may have Indian ancestry with the Cherokee tribe through the maternal great-great-grandmother “Lugene” S. At the August 25, 2006 hearing, the court stated that it “has no reason to believe this is an American Indian case, but we are going to give notice to the Cherokee tribes and the Bureau [of Indian Affairs].”

In an October 2006 interim review report, the maternal grandmother reported that there is Choctaw ancestry in their family through the maternal great-great-grandmother, “Lou Jean” S. In September 2006, DCFS sent notice of the dependency proceedings by

¹ The alleged father of A.P. visited his son early in the proceedings below, but by April 2008, he had stopped visiting and was not involved in his son’s life. The whereabouts of the alleged father of J.A.C. were unknown to DCFS throughout the proceedings and he did not appear below. A.P.’s alleged father was not his biological father, and Mother does not claim that A.P. has any Indian ancestry through his alleged father.

certified mail to three Choctaw tribes, the Secretary of the Interior, and the Bureau of Indian Affairs (BIA). The notices listed the maternal great-great-grandmother as “Lou Jean” S., born on September 5, 1932, in Texas, and a date of death of 1978 in Lawton, Oklahoma. The notices did not contain the alternate spelling offered by Mother of “Lugene” S.

In October 2006, the Mississippi Band of Choctaw Indians and the BIA sent response letters. The Mississippi Band of Choctaw Indians stated that none of the family members, including the Children, were enrolled with the tribe or eligible for enrollment. The BIA stated that the document was being returned because the information did not require a response or action by the BIA because (1) it was not a notice pursuant to the ICWA, but notice of a court hearing, and (2) the county already had provided notice to the tribe or tribes.

After a jurisdictional hearing on October 10, 2006, the juvenile court sustained an amended petition declaring the Children dependents of the court pursuant to Welfare and Institutions Code section 300, subdivisions (b) (failure to protect) and (g) (no provision for support).² In November 2006, the court ordered DCFS to provide ICWA notice to three Cherokee tribes. On December 1, 2006, notices of involuntary child custody proceedings were sent to the Cherokee tribes, the Secretary of the Interior, and the BIA; the notices listed the maternal great-great-grandmother as “Lou Jean” S., without the alternate spelling of “Lugene” S. On December 13, 2006, DCFS provided signed certified mail receipts for the BIA and the Cherokee tribes. In December 2006 and January 2007, the three Cherokee tribes each responded with a letter stating that, based on the information provided, the Children were not members of the tribe nor eligible for membership in the tribe.

At the disposition hearing in February 2007, the juvenile court removed the Children from Mother but afforded her family reunification services and monitored

² Unspecified statutory references are to the Welfare and Institutions Code.

visitation. The court also found the ICWA notice to be proper and that this was not an ICWA case. In December 2007, the court terminated Mother's reunification services and set a permanent plan hearing. DCFS reported that Mother visited the Children only once every six weeks from December 2007 to April 2008. After a contested hearing on June 11, 2008, the court terminated parental rights and selected adoption as the permanent plan. Mother appeals from the order terminating her parental rights, challenging only the adequacy of the ICWA notice on the grounds that the notices failed to contain the alternative spelling of the name of the maternal great-great-grandmother and failed to insure "due inquiry" by the BIA in a situation where the tribal identity was unknown.

DISCUSSION

Notwithstanding Mother's failure to raise her ICWA challenges below, these issues are not forfeited on appeal. (*In re J.T.* (2007) 154 Cal.App.4th 986, 991 (*J.T.*)). We review the order finding adequate ICWA notice for substantial evidence. (*Ibid.*)

"State law mandates notice to 'all tribes of which the child may be a member or eligible for membership.' (§ 224.2, subd. (a)(3).)" (*J.T.*, *supra*, 154 Cal.App.4th at p. 992.) The 2006 enactment of section 224.2 expressly provides that "heightened state law standards shall prevail over more lenient ICWA requirements." (*J.T.*, at p. 993.) Section 224.2, subdivision (a)(4) requires notice to the BIA regardless of whether the identity of the child's tribe is known.³

"The purpose of the ICWA notice provisions is to enable the tribe or the BIA to investigate and determine whether the child is in fact an Indian child. [Citation.] Notice

³ Subdivision (a)(4) of section 224.2 provides: "Notice, to the extent required by federal law, shall be sent to the Secretary of the Interior's designated agent, the Sacramento Area Director, Bureau of Indian Affairs. If the identity or location of the parents, Indian custodians, or the minor's tribe is known, a copy of the notice shall also be sent directly to the Secretary of the Interior, unless the Secretary of the Interior has waived the notice in writing and the person responsible for giving notice under this section has filed proof of the waiver with the court."

given under ICWA must therefore contain enough information to permit the tribe to conduct a meaningful review of its records to determine the child's eligibility for membership.” (*In re Cheyanne F.* (2008) 164 Cal.App.4th 571, 576.)

“Section 224.2, subdivision (a) codifies notice requirements set forth in the federal regulations implementing ICWA. [Citation.] Both the federal regulation and section 224.2, subdivision (a) require the social services agency to provide as much information as is known concerning the child's direct lineal ancestors, including all names of the child's biological parents, grandparents, and great-grandparents, or Indian custodians, including maiden, married and former names or aliases, as well as their current and former addresses, birthdates, places of birth and death, tribal enrollment numbers, and any other identifying information, if known. (25 C.F.R. § 23.11(d)(3) (2008); Welf. & Inst. Code, § 224.2, subd. (a)(5)(C).)” (*In re Cheyanne F.*, *supra*, 164 Cal.App.4th at p. 575, fn. 3.)

Substantial evidence does not support the juvenile court's finding of proper ICWA notice because the notices to the tribes and the BIA did not contain all aliases or names by which the maternal great-great grandmother was known. Thus, the omission of the alternate spelling of the great-great grandmother's name prevented “a meaningful review” of the tribal records. Because ICWA notice requirements were not satisfied, we remand for the limited purpose of ensuring proper ICWA notice. (*In re Rayna N.* (2008) 163 Cal.App.4th 262, 268 [“section 224.2, subdivision (d), does not prohibit a limited reversal and remand to permit compliance”].)

Because corrected notice will be given to the tribes and the BIA on remand, Mother's contention that DCFS did not do anything to ensure “due inquiry” by the BIA is moot. And, as pointed out by DCFS, Mother cites no authority for the proposition that DCFS is required to respond in some fashion after proper notice has been given to the BIA.

DISPOSITION

The order terminating parental rights is reversed, and the matter is remanded to the juvenile court with directions to order the Los Angeles County Department of Children

and Family Services to comply with the notice provisions of the Indian Child Welfare Act. If, after proper notice, the court finds that the children are Indian children, the juvenile court shall proceed in conformity with the provisions of the Indian Child Welfare Act. If, on the other hand, the court finds that the children are not Indian children, the order terminating parental rights shall be reinstated.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

ROTHSCHILD, J.

WEISBERG, J.*

* Retired Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.